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COUNTRY HEIGHTS HOLDINGS BHD v. MONALIZA ZAIDEL & ORS

HIGH COURT MALAYA, SHAH ALAM
FAIZAH JAMALUDIN J
[ORIGINATING SUMMONS NO: BA-24NCC-137-12-2020]
B 23 AUGUST 2021

CIVIL PROCEDURE: *Jurisdiction – Local jurisdiction – Application for injunction to restrain company's board of directors' special meeting – Application filed in High Court of Malaya at Shah Alam – Whether had local jurisdiction to*
C *hear application – Whether High Court of Sabah and Sarawak the proper court to try application – Company had place of business in Sarawak – Company's directors residents of Sarawak – Notice to requisition meeting and venue of meeting in Sarawak – Land sought to be developed by company located in Sarawak – Courts of Judicature Act 1964, s. 23(1)(a), (b), (c) & (d)*

D

CIVIL PROCEDURE: *Action – Striking out – Application for injunction to restrain company's board of directors' special meeting – Application filed in High Court of Malaya at Shah Alam – Whether had local jurisdiction to hear application – Whether High Court of Sabah and Sarawak the proper court to try application – Whether all criterias mentioned under s. 23(1) of Courts of Judicature Act 1964*
E *satisfied – Whether application plain and obviously unsustainable – Rules of Court 2012, O. 18 r. 19((1)(a), (b) & (d)*

The plaintiff was a company incorporated under the Companies Act 1965 experienced in developing resorts with tourism, recreational and leisure activities. Meanwhile, the Land Custody and Development Authority
F ('LCDA') was a State of Sarawak statutory corporation formed under the Land Custody Development Ordinance 1981. Together, they entered into a joint venture agreement ('JVA') to develop a piece of land alienated by the State Government of Sarawak to LCDA situated on Gunong Penrissen, Sarawak ('project land') into a hill resort called Borneo Highlands Resort
G ('resort'). In pursuance of cl. 1.1 of the JVA, for the purpose of the project, a private company limited by shares was formed as a joint venture company and it be named as Borneo Heights Sdn Bhd. Therefore, an existing company was used for this purpose and had it name changed to Borneo Heights Sdn Bhd ('third defendant'). The plaintiff was allotted 70% while LCDA 30% of
H the shares of the third defendant, and, LCDA's shares in the third defendant was held by its wholly-owned subsidiary, LCDA Holdings Sdn Bhd ('LCDA Holdings'). At all material times, the third defendant had a registered address at Seri Kembangan, Selangor while its place of business was at Kuching, Sarawak. Nevertheless, the first and second defendants, who were also
I nominees of LCDA Holdings, were appointed as the third defendant's director. They were both residents of Sarawak. In 2020, disputes arose

between the plaintiff and LCDA Holdings regarding the resort's management. Several issues were raised by LCDA Holdings *via* a letter dated 30 June 2020 to the plaintiff, which were regarding (i) the plaintiff's total lockdown of the resort without prior consultation with LCDA; (ii) the resort and its surroundings had not been well maintained as only 39 staffs were allocated to oversee the resort's management; (iii) no dividend had been declared ever since the third defendant's incorporation; (iv) there had not been any board of directors' or shareholders' meeting held in the past three years despite requests from LCDA; (v) the plaintiff had failed in its task to manage the resort in accordance with the JVA, therefore, a due diligence exercise should be commenced against the third defendant; (vi) in pursuance of the audited accounts for the years ended 2018 and 2019, the third defendant suffered losses which raised material uncertainty as to the third defendant's ability to continue managing the resort; and (vii) 'letter from the land office dated 4 August 2020' to the plaintiff which required show cause from the plaintiff's executive chairman, Tan Sri Lee Kim Tiong ('Tan Sri Lee') within 28 days as to why action under s. 33 of the Sarawak Land Code should not be taken due to the project not been executed in accordance with the special condition as prescribed on the project land's document of title. Towards this letter, Tan Sri Lee averred that it 'was tainted with *mala fide* and done with collateral purpose'. Later on, LCDA through a letter dated 17 September 2020 requested the plaintiff to remedy the breaches done by the plaintiff toward the JVA ('notice to remedy breaches'). In reply, the plaintiff proposed a virtual emergency board meeting *via* zoom or other online platforms to address all the allegations made by LCDA, but, it would be held no later than 15 October 2020 due to the ongoing restricted movement control order. LCDA subsequently terminated the JVA. The plaintiff contended the termination was improper and bad in law. Regardless, the first defendant requisitioned a special meeting of the board of directors of the third defendant scheduled on 17 November 2020 to be held at LCDA Holdings' office in Sarawak. On 13 November 2020, the plaintiff filed an originating summons ('OS 123') at the Shah Alam High Court, seeking among others, for an injunction to restrain the defendants from holding that special board of directors' meeting. This was objected by the defendants who contended the Shah Alam High Court had no territorial jurisdiction to hear the matter, hence, OS 123 was retracted. Subsequently, the first defendant issued another notice to requisition another special meeting of the board of directors' of the third defendant on 28 December 2020 ('28 December 2020 meeting'). Hence, the plaintiff's current action in filing (i) the originating summons in encl. 1 for (a) an injunction restraining the defendants from holding the 28 December 2020 meeting; (b) an injunction restraining the defendants from taking any steps to approve any resolutions detrimental to the JVA in the said meeting; (c) any and all resolutions passed in the meeting be declared null and void; and (ii) an interim injunction in encl. 2 (a)

restraining the defendants from proceeding with the 28 December 2020 meeting until disposal of encl. 1; and (b) an order that any and all agendas or resolutions proposed in the said meeting could not be passed until disposal of encl. 1. In resisting the plaintiff's action, the defendants filed an application, in encl. 13 to strike out both encls. 1 and 2 under O. 18 r. 19(1)(a), (b) and (d) of the Rules of Court 2012. They posited the court had no jurisdiction to hear the matter and it should be heard at a High Court of Sabah and Sarawak as, *inter alia*: (i) the JVA was for the development, operation and management of the resort which was situated in Sarawak; (ii) LCDA was a Sarawak state statutory corporation; (iii) the first and second defendants were residents of Sarawak; (iv) the third defendant had its place of business in Sarawak; and (v) the 28 December meeting the plaintiff sought to restrain was to be held in Sarawak.

Held (dismissing encls. 1 and 2):

(1) Under s. 23(1)(a) of the Courts of Judicature Act 1964 ('CJA'), the High Court in whose local jurisdiction 'the cause of action' arose shall have local jurisdiction to the civil proceedings related to that cause of action. In this case, the alleged cause for the plaintiff's action all arose in Sarawak, in that, among others: (i) the first defendant's action of requisitioning the 28 December 2020 meeting, as to its notice and location, both took place in Kuching, Sarawak; (ii) the alleged actions of the first and second defendants, in conducting the affairs of the third defendant, that it was oppressive, prejudicial and discriminatory to its interest, took place in Sarawak; (iii) the first and second defendants alleged action in seeking to take control of the third defendant by, among others, wrongfully seeking to forfeit the plaintiff's shares in third defendant, and, for causing the project land to be forfeited by the Sarawak Government, arose in Sarawak; (iv) the plaintiff's alleged cause of action and grounds of complaints against first and second defendants were essentially for actions and decisions taken in Sarawak in respect of development, management and operation of the resort, which was situated in Gunong Penrissen, Sarawak. (paras 85-90)

(2) Section 23(1)(b) of the CJA stipulates the High Court 'where the defendant or one of several defendants resides or has his place of business' shall have jurisdiction to try the proceedings. Therefore, the fact that the third defendant's registered address was in the territory of a High Court does not automatically confer jurisdiction to that High Court under the same section if the third defendant's place of business was located in the jurisdiction of another High Court. From the facts, the third defendant's place of business was in Sarawak where it operated and managed the resort. Per the terms of the JVA, the *raison d'etre* of the third defendant was to be a vehicle for the parties to the JVA, the plaintiff and

LCDA to own, develop, operate and manage the project land and the resort, all of which were situated in Sarawak. Further, the first and second defendants were also residents of Sarawak, which was within the local jurisdiction of the High Court of Sabah and Sarawak and not the High Court of Malaya at Shah Alam. (paras 91, 92, 94 & 97)

(3) Section 23(1)(c) of the CJA states the High Court 'where the facts on which the proceedings are based exist or alleged to have occurred' shall have jurisdiction to try the proceedings. The injunction, declarations, and order the plaintiff were seeking in the current action stemmed from the notice of requisition of the 28 December 2020 meeting which was to be held in Kuching, Sarawak. The notice was also issued in the same place. As such, pursuant to the cited section, the High Court of Sabah and Sarawak has the jurisdiction to try these proceedings. (paras 98-100)

(4) Section 23(1)(d) of the CJA provides the High Court 'where any land the ownership of which is disputed is situated' shall have the jurisdiction to try these proceedings. The resort and the project land, which was the subject matter of the JVA, and, which the plaintiff was claiming an interest by virtue of its shareholding in the third defendant, were situated in Kuching, Sarawak. Thus, pursuant to the above-said section, the jurisdiction to try these proceedings should be on the High Court of Sabah and Sarawak. (paras 101, 102 & 104)

(5) None of the criterias mentioned in s. 23(1) of the CJA existed in the local jurisdiction of the High Court of Malaya at Shah Alam. Hence, this court could not confer territorial jurisdiction unto itself pertaining to the plaintiff's applications in encls. 1 and 2. As the court is not equipped with the jurisdiction to hear the plaintiff's applications, they were plain, obviously unsustainable, scandalous, frivolous, vexatious and also an abuse of court process. The action should had been filed at the High Court of Sabah and Sarawak at Kuching. Therefore, the first and second defendants' application to strike out both encls. 1 and 2 was allowed with costs. (paras 105 &, 107-109)

Case(s) referred to:

Attorney-General of Duchy of Lancaster v. L & N.W. Railway Co [1892] 3 Ch 274 ***(refd)***

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Bank Industri & Teknologi Malaysia Bhd v. Alom Building Systems Sdn Bhd [2006] 3 CLJ 506 HC ***(refd)***

Bank Utama (Malaysia) Bhd v. Perkapalan Dai Zhun Sdn Bhd [2003] 1 CLJ 450 HC ***(refd)***

Choong Sheng Development Sdn Bhd v. Corak Nakhoda Sdn Bhd [2011] 1 LNS 772 CA ***(refd)***

Dayasar Corp Sdn Bhd v. CP Ng & Co Sdn Bhd [1990] 1 CLJ 262; [1990] 2 CLJ (Rep) 11 HC ***(refd)***

Fung Beng Tiat v. Marid Construction Co [1997] 2 CLJ 1 FC ***(refd)***
Goodness For Import And Export v. Phillip Morris Brands SARL [2016] 7 CLJ 303 FC ***(refd)***
Hap Seng Plantations (River Estates) Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor [2016] 4 CLJ 641 FC ***(refd)***
Malaysian Assurance Alliance Bhd v. Cosma Properties Sdn Bhd [2013] 1 CLJ 69 CA ***(refd)***
Matchplan (Malaysia) Sdn Bhd & Anor v. William D Sinrich & Anor [2004] 1 CLJ 810 CA ***(refd)***
Pengiran Othman Shah Pengiran Mohd Yussof & Anor v. Karambunai Resorts Sdn Bhd & Ors [1996] 1 CLJ 257 CA ***(refd)***
RHB Bank Bhd v. Kawood Sdn Bhd & Ors And Another Suit [2002] 2 CLJ 387 HC ***(refd)***
Sie Kie Chon v. Superintendent of Pudu Prison & Ors [1985] 2 CLJ 449; [1985] CLJ (Rep) 293 SC ***(refd)***
Siti Nur Aishah Ishak v. Golden Plus Holdings Bhd [2017] 8 CLJ 272 CA ***(refd)***

Legislation referred to:
Companies Act 2016, s. 212, Third Schedule paras 3, 4
Courts of Judicature Act 1964, s. 23(1)(a), (b), (c), (d)
Federal Constitution, art. 121
Land Code (Sarawak) (Cap 81), s. 33(1)
Rules of Court 2012, O. 18 r. 19(1)(a), (b), (d), O. 57 r. 1

For the plaintiff - Sanjay Mohan; M/s Sanjay Mohan
For the defendants - Yoong Sin Min; M/s Shook Lin & Bok

Reported by Syamim Ariffin

JUDGMENT

Faizah Jamaludin J:

Introduction

[1] This case concerns the territorial jurisdiction of the two High Courts in Malaysia – the High Court of Malaya and the High Court of Sabah and Sarawak.

[2] The issue for determination before this court is whether the High Court of Malaya is seized with the jurisdiction to hear the plaintiff's originating summons ("OS") in encl. 1 and its application for interim injunction in encl. 2 filed in this court.

[3] The plaintiff says yes. But the first and second defendants say no. They applied in this encl. 13 to strike out the plaintiff's OS and its notice of application for an interim injunction under O. 18 r. 19(1)(a), (b) and (d) of the Rules of Court 2012. They contend that the jurisdiction to hear the application is with the High Court of Sabah and Sarawak at Kuching and not with the High Court of Malaya at Shah Alam, and that the plaintiff's action against them is an abuse of the process of court.

[4] Based on the applicable law and the factual matrix of this case, this court agrees with the first and second defendants that the High Court of Malaya does not have the jurisdiction to hear the plaintiff's OS and application in encl. 2, and that the jurisdiction lies with the High Court of Sabah and Sarawak. Accordingly, at the conclusion of the hearing, this court allowed the first and second defendants' application.

[5] The full reasons for this court's decision are set out in this judgment.

Plaintiff's OS And Notice Of Application

[6] In the OS, the plaintiff applied for (i) an injunction restraining the defendants from holding or participating in a special board of directors' meeting of the third defendant ("the special BOD meeting") scheduled on 28 December 2020, which was requisitioned by the first defendant through a notice of meeting dated 18 December 2020 ("the 18 December notice of meeting"); (ii) an injunction restraining the first and second defendants from taking any steps to approve any resolutions detrimental to the JVA pending the disposal of the arbitration between the plaintiff and LCDA; and (iii) declarations that (a) the 18 December notice of meeting be declared as null and void; (b) any and all resolutions issued at the special BOD meeting be declared as null and void; or in the alternative, that any and all resolutions passed in the special BOD meeting premised on the 18 December notice of meeting be declared null and void; (c) that Datuk Lim Chih Li @ Lin Zhili, En. Jaleeludeen bin Abu Bakar, and En. Balraj Singh Pannu a/l Gajian Singh were appointed as directors of the third defendant ("the new directors") validly and correctly on 10 November 2020; (d) that the first and second defendant as directors of the third defendant had conducted the affairs of the third defendant in a manner that oppressed and/or ignored the plaintiff's interests; and (e) that the first and second defendant as directors of the third defendant had conducted the affairs of the third defendant unfairly to discriminate or prejudice the plaintiff as a majority shareholder of the third defendant.

[7] In the notice of application (encl. 2), the plaintiff applied for (i) an interim injunction restraining the defendants from proceeding with the special BOD meeting scheduled on 28 December 2020 until the disposal of the OS; and (ii) an order that any and all agendas or resolutions proposed at the special BOD meeting as stated in the 18 December notice of meeting cannot be proposed (in any manner whatsoever) or passed in any board of directors' meeting of the third defendant until the disposal of the OS.

Key Facts

[8] The plaintiff and the Land Custody and Development Authority ("LCDA") entered into a joint venture dated 20 September 1994 ("JVA") for the development of land located on Gunong Penrissen in Kuching, Sarawak into a hill resort with tourism related infrastructure, recreational and leisure facilities, and horticulture.

[9] The LCDA is a creature of a Sarawak State Enactment – it is a state statutory corporation formed under the Land Custody and Development Ordinance 1981, a State Enactment passed by the State Legislature of Sarawak.

[10] The plaintiff is a public limited liability company incorporated under the Companies Act 1965 with its principal office at Country Heights, Kajang, Selangor. The plaintiff says that it is an experienced developer with the necessary experience in developing resorts with tourism related infrastructure and recreational and leisure facilities – this can be seen from the para. 7 of the plaintiff's affidavit in support of its OS affirmed on 22 December 2020 (encl. 3), where its deponent, Tan Sri Lee Kim Tiong @ Lee Kim Yew ("Tan Sri Lee"), the Executive Chairman of the plaintiff, says:

> 7. The Plaintiff being an experienced developer and also having the necessary experience in the development of resorts with tourism related infrastructure and recreational and leisure facilities was interested in the development of the Project Land. As such, it was agreed that the parties would enter into joint venture to develop the Project Land and to implement the project in accordance with the terms and conditions agreed by the parties.

[11] The recital of JVA states as follows:

> WHEREAS:
>
> A. By a letter dated 15th July 1994 (the "Letter of Offer" a copy of which is annexed hereto as Annexure 1) from the Superintendent of Land and Surveys, Kuching Division to LCDA the Superintendent of Land and Surveys, Kuching Division confirmed its approval to alienate to LCDA upon terms set out in the Letter of Offer 2071 hectares more of less of land (the "Project Land") which is better identified and delineated in red in the map annexed hereto as Annexure 2.
>
> B. LCDA (Land Custody and Development Authority) intends to develop the Project Land into a hill resort with tourism related infrastructure, recreational and leisure facilities and horticulture (the "Project").
>
> C. CHHB (Country Heights Holdings Berhad) had experience in the development of resorts with tourism related infrastructure and recreational and leisure facilities.
>
> D. LCDA and CHHB have agreed to enter into a joint-venture to develop the Project Land and to implement the Project in accordance with terms and conditions hereinafter appearing.

[12] Clause 1.1 of the JVA states that the plaintiff and LCDA are to:

procure the formation and incorporation in Malaysia of a private company (the "Company") limited by shares under the Companies Act 1965 and the Company shall be call Borneo Heights Sdn Bhd or such other name as may be approved by the Registrar of Companies and accepted by the parties hereto.

[13] An existing company named Binary Alliance Sdn Bhd, the name of which was later changed to Borneo Heights Sdn Bhd on 7 April 1994, was used as the joint venture company. Pursuant to the JVA, shares were allotted to the parties in Borneo Heights Sdn Bhd. The plaintiff was allotted 70% and LCDA 30% of the issued share capital of the company. LCDA's shares in Borneo Heights Sdn Bhd are held by its wholly owned subsidiary, LCDA Holdings Sdn Bhd ("LCDA Holdings").

[14] Borneo Heights Sdn Bhd is the third defendant in this case. Its registered address is at the Mines Resort City, Seri Kembanagan Selangor and its place of business at 2nd Floor, Lot 1269, Block 17, KLCD, Jalan Lapangan Terbang, Kuching, Sarawak.

[15] For the purposes of the JVA, the State Government of Sarawak, had on 5 September 1994, alienated to LCDA a piece of land measuring 2071 hectares situated on the Gunong Penrissen, Padawan, Kuching described as Lot 15 Block 11 Pangkalan Ampat Land District ("the project land").

[16] The project land was then transferred to and registered in the name of the third defendant for purposes of developing the project land and for the third defendant to own, promote and manage a resort known as the "Borneo Highlands Resort" to be built on the said project land.

[17] The first and second defendants are directors of the third defendant. They are both nominees of LCDA Holdings on the board of the third defendant. The first defendant is also the CEO of LCDA Holdings. They are both residents of Sarawak.

[18] In 2020, disputes arose between the plaintiff and LCDA Holdings as regards the management of the Borneo Highlands Resort. It culminated in LCDA Holdings issuing on behalf of LCDA, a notice of termination of the JVA dated 2 November 2020 on the plaintiff.

30 June 2020 Letter From LCDA Holdings To The Plaintiff

[19] On 30 June 2020, LCDA Holdings wrote a letter to the plaintiff requesting for an extra ordinary general meeting ("EGM") of the third defendant (referred to in the letter as the "JVC" (joint venture company)) on or before 15 July 2020 for a special resolution to be passed to increase the paid-up capital of the third defendant in the sum of RM6 million, which shall be subscribed by the shareholders – the plaintiff and LCDA Holdings – in cash to the proportion of their shareholding for purposes of approximately two years maintenance and operations of the Borneo Highlands Resort.

[20] The 30 June 2020 letter from LCDA Holdings to the plaintiff was signed by the first defendant in her capacity as CEO of LCDA Holdings. It was addressed to Tan Sri Lee in his capacity as Executive Chairman of the plaintiff.

[21] LCDA Holdings raised several issues in the 30 June 2020 letter, including the plaintiff's total lockdown of the resort, without prior consultation with LCDA. It also stated that the resort has not been well maintained with only 39 staff allocated to manage the operation of the resort and that there were also complaints by the property owners about the poor maintenance of the resort and its surrounding areas. LCDA Holdings stated in the letter that these complaints will tarnish LCDA's reputation. LCDA also raised the fact that no dividend had been declared since the incorporation of the third defendant and there had not been any board of directors' or shareholders' meetings despite repeated requests from LCDA for the past three years.

[22] LCDA Holdings went on to remind the plaintiff that pursuant to cl. 7.1(a) of the JVA, the plaintiff is responsible for the management of the third defendant, and the promotion, development and financing of the Borneo Highlands Resort. LCDA Holdings concluded the letter by requesting for a due diligence on the third defendant:

> 6. In light of the above, LCDA would want to carry out due diligence exercise on the JVC in order to exercise its right to ensure the JVC's business is conducted with sound and good practice and highest ethical standard in line with Clause 17.1(b) of the Joint Venture Agreement.

13 July 2020 Letter From LCDA Holdings To The Third Defendant

[23] On 13 July 2020, the first defendant in a letter (on LCDA Holdings' letterhead paper) to the third defendant, in her capacity as director of the third defendant representing LCDA Holdings, gave notice to the third defendant of her intention pursuant to the Companies Act 2016 to inspect the documents listed in the said letter.

Reply From Third Defendant To The 30 June 2020 And 13 July 2020 Letters

[24] On 13 July 2020, the third defendant replied both letters from LCDA Holdings stating that they are agreeable to the EGM and the inspection of the documents but only after 31 August 2020, ie, after the restricted movement control order ("RMCO") by the Malaysian Government has been lifted.

[25] The first defendant replied to the third defendant on 14 July 2020, in her capacity as director of the third defendant, that she cannot agree that the inspection of the documents be carried out after the RMCO is lifted. This is because the independent auditors of the third defendant had reported in its

audited accounts for year ended 31 December 2018 that there was "a material uncertainty that may cast significant doubt on the group's and the company's ability to continue as a going concern." Also, because the unaudited management accounts for 2019 of the third defendant show accumulated losses of RM33,821,329.28.

[26] The affidavit evidence shows that the third defendant's independent auditors, in the third defendant's audited accounts for year ended 31 December 2018, without qualifying their opinion, had drawn attention to the fact that material uncertainty exists as to the third defendant's ability to continue as a going concern:

> **Material Uncertainty Related to Going Concern**
>
> We draw attention to Note 2(b) in the financial statements, which indicates that the Group and the Company incurred a net loss of RM2,030,785 and RM2,053,323 respectively during the financial year ended 31 December 2018 and, as of that date, the Group and the Company's current liabilities exceeded their current assets by RM99,953,087 and RM37,807,147 respectively and they had a deficit in shareholders' equity of RM38,009,087 and RM416,732 respectively, thereby indicating that **a material uncertainty exists that may cast significant doubt on the Group's and the Company's ability to continue as a going concern.** Our opinion is not modified in respect of this matter.
>
> (emphasis added)

[27] The independent auditors repeated their concern in the third defendant's audited accounts for year ended 31 December 2019, that the third defendant may not be able to continue as a going concern:

> **Material Uncertainty Related to Going Concern**
>
> We draw attention to Note 2(b) in the financial statements, which indicates that the Group and the Company incurred a net loss of RM2,526,980 and RM5,924,632 respectively during the financial year ended 31 December 2019 and, as of that date, the Group and the Company's current liabilities exceeded their current assets by RM102,040,745 and RM38,730,235 respectively and they had a deficit in shareholders' equity of RM40,536,424 and RM6,341,578 respectively, thereby indicating that **a material uncertainty exists that may cast significant doubt on the Group's and the Company's ability to continue as a going concern.** Our opinion is not modified in respect of this matter.
>
> (emphasis added)

[28] Tan Sri Lee in the plaintiff's affidavit in support (encl. 3) averred that the LCDA Holdings letter of 30 June 2020 to the plaintiff "was tainted with *mala fide* and done for a collateral purpose". He said in para. 18 of the plaintiff's affidavit in support:

A I state that this letter from LCDA Holdings dated 30th June 2020 marked a distinct shift in the manner in which the shareholders were operating with each other. I state that from 1994 until this point in time, the shareholders to the joint venture worked on a basis of mutual trust and cooperation and were never hostile to each other. The letter from LCDA Holdings was the beginning of the hostile environment that it decided to B foster, and I verily believe that it was tainted with *male fide* and done for a collateral purpose.

[29] And in para. 18 (q) of the plaintiff's affidavit in reply (encl. 17), Tan Sri Lee said:

C (q) I state that given LCDA Holdings did not once raise an issue in the past 26 years it is highly inappropriate for LCDA Holdings to now at this juncture after allowing the Plaintiff to believe that it was satisfied with the progress of the development. I state, that LCDA Holdings has no basis to take issue with the progress of the development and that it was wrong for the Land Office to have D issued the letter dated 4th August 2020.

[30] The "letter from the land office dated 4 August 2020" referred to Tan Sri Lee is a letter dated 4 August 2020 ("the show cause letter") from the Sarawak Ibu Pejabat Tanah dan Survei (the "Land and Survey Department") to the third defendant (for the attention of Tan Sri Lee as its director) to show E cause within 28 days from the date of the letter, as to why action should not be taken under s. 33 of the Sarawak Land Code for breach of title condition of the project land. Section 33(1) of the Sarawak Land Code allows the Director of Land and Surveys, or any officer authorised by him, on behalf of the Sarawak Government, to forfeit the land and re-enter the land or the F portion thereof in respect of which a breach or default of any condition on document of title had had occurred.

[31] In the show cause letter, the Land and Survey Department stated that the project land was alienated by the State Government to LCDA on 5 September 1994 and transferred to and registered in the name of the third G defendant. It goes on to state that the project had not been completed in accordance with special condition 1(ii) on the document of title for the project land, which states:

1(ii) The development or re-development and use of this land shall be in accordance with a plan of development approved by the Director H of Lands and Surveys and shall be completed within a period of five (5) years from the date of registration of this lease.

[32] Tan Sri Lee in para. 18(m)(i) of the plaintiff's affidavit in reply (encl. 17) stated that he did not understand the complaint made by the Land and Survey Department that the project was not completed "given the fact I that LCDA Holdings was fully aware as to what the status of the development was at all times." He went on to state in para. 18 (m)(ii):

(ii) Given that LCDA was part of the state apparatus and was perfectly content with the pace of development and the manner in which the project had been managed over the last 26 years I do not see the basis for this complaint or threat from the Land Office to invoke Section 33 of the Sarawak Land Code which is essentially the right to forfeit the Project Lands.

[33] LCDA on 17 September 2020 issued a letter requesting the plaintiff to remedy what it states are breaches by the plaintiff of the JVA ("notice to remedy breaches").

[34] The plaintiff on 23 September 2020 replied LCDA's notice to remedy breaches where it proposed an emergency board meeting to address all the allegations made by LCDA.

[35] LCDA replied to the plaintiff's letter on 1 October 2020 stating, among others, that the plaintiff can requisition for the board meeting, but the meeting should be held no later than 15 October 2020 and due to the ongoing RMCO, the meeting may be held in Kuching or at the Borneo Highlands Resort or virtually *via* Zoom, Microsoft Teams or any other online platform.

[36] On 2 November 2020 through a letter to the plaintiff, LCDA terminated the JVA pursuant to cl. 12.2 of the JVA, on the grounds that the plaintiff had failed and/or refused to take the necessary action to remedy the breaches detailed in LCDA's notice to remedy breaches within 30 days from the service of the said notice.

[37] The plaintiff disputes the validity of LCDA's termination of the JVA and had rejected the termination. In the plaintiff's affidavit in reply (encl. 17), Tan Sri Lee said that the plaintiff through its solicitors' letter dated 2 December 2020 had informed LCDA that the notice of termination issued by LCDA Holdings was bad in law and improperly and wrongfully issued.

[38] On 5 November 2020, the first defendant requisitioned for a special meeting of the third defendant's board of directors on 17 November 2020 at LCDA Holdings office in Kuching, Sarawak.

[39] On 11 November 2020, the company secretary of the third defendant replied to the first defendant that because of the Conditional Movement Control Order ("CMCO"), it was impossible for all the directors to attend a board meeting in Kuching. The company secretary said that they can consider her request for a meeting after the CMCO and the inter-state travel ban has been lifted.

[40] On 13 November 2020, the first defendant replied to the third defendant's company secretary stating that since he refused to issue the notice of meeting for the Special Board of Directors' meeting she had requisitioned, she as director of the third defendant, pursuant to s. 212 and para. 3 and 4

of the third schedule of the Companies Act 2016 read with art. 79 of the third defendant's Articles of Association, shall issue a notice of meeting which will be held in accordance with para. 6(b) of the third schedule by audio and visual communication using the zoom platform.

[41] On the same day, ie, on 13 November 2020, the plaintiff filed an originating summons (BA-24NCC-123-11-2020) ("OS 123") at the High Court of Malaya at Shah Alam against the first, second and third defendants seeking for, among others, an injunction to restrain the defendants from holding and participating in a special board of directors meeting scheduled on 17 November 2020 based on the first defendant's notice of requisition dated 5 November 2020.

[42] The defendants objected to the filing of OS 123 at the Shah Alam High Court since the first and second defendants reside in Sarawak and the third defendant's place of business is in Sarawak. On 19 November 2020, the plaintiff informed the Shah Alam High Court that it was withdrawing OS 123 and on 10 December 2020, OS 123 was withdrawn with costs of RM3,000.

[43] On 18 December 2020, the first defendant issued a notice to requisition a special meeting of the Board of Directors of the third defendant on 28 December 2020.

[44] On 23 December 2020, the plaintiff filed this OS and encl. 2 seeking the injunction and interim injunction and the declarations detailed in para. [6] above. The first defendant's notice of requisition dated 18 December 2020 and the special board of directors' meeting scheduled on 28 December 2020, are the subject-matter of the OS and encl. 2 – they are earlier defined as "the 18 December notice of meeting" and "the special BOD meeting" respectively in para. [6] above.

The First And Second Defendants' Case

[45] The first and second defendants' case is that the jurisdiction to hear and try the plaintiff's applications is vested in the High Court in Sabah and Sarawak and not the High Court in Malaya, given that the JVA was for the development, operation and management of the Borneo Highlands Resort in Sarawak; the LCDA is a Sarawak state statutory corporation formed under Sarawak's Land Custody and Development Ordinance 1981; the first and second defendants are residents of Sarawak; and the third defendant has its place of business in Sarawak – all of which are within the local jurisdiction of the High Court in Sabah and Sarawak.

[46] The first and second defendants contend that the plaintiff's claim in the OS and encl. 2 are unsustainable and are an abuse of process of court. They submit that the plaintiff's claim ought to be struck out and dismissed on the following grounds:

(i) The plaintiff's alleged cause of action/grounds of complaint are essentially against LCDA and LCDA Holdings who are not made parties to the OS;

(ii) The plaintiff's claim purports to seek reliefs and remedies as against the first and second defendants only, and not the third defendant.

(iii) It is undisputed that both the first and second defendants reside in Sarawak within the local jurisdiction of the High Court of Sabah and Sarawak and not within the local jurisdiction of the High Court of Malaya;

(iv) The third defendant has its place of business is in Kuching, Sarawak within the local jurisdiction of the High Court of Sabah and Sarawak at Kuching, and is not within the local jurisdiction of the High Court of Malaya at Shah Alam;

(v) The facts alleged by the plaintiff, on which the plaintiff's OS are based and/or alleged to have occurred are within the local jurisdiction of the High Court of Sabah and Sarawak and not within the local jurisdiction of the High Court of Malaya;

(vi) The Borneo Highlands Resort and the project land are situated in Sarawak;

(vii) The special BOD meeting of the third defendant, which the plaintiff is seeking to restrain is a meeting to be held in Kuching, Sarawak.

[47] The first and second defendants submit that the High Court of Sabah and Sarawak in Kuching has territorial jurisdiction over the matters set out in the plaintiff's claim. The High Court of Malaya in Shah Alam cannot confer territorial jurisdiction on itself over the plaintiff's case since the plaintiff's OS and application in encl. 2 does meet any of the criteria in ss. 23(1)(b),(c) and (d) of the Courts of Judicature Act 1964.

[48] Learned counsel for the first and second defendants, Ms. Yoong Sin Min, submits that the plaintiff's action in the OS and encl. 2 concerns a shareholder dispute between the plaintiff and LCDA Holdings; that the dispute concerns the JVA to develop the Borneo Highlands Resort in Sarawak and the operations and business of the third defendant in Sarawak and the termination of the JVA by LCDA Holdings. The matters complained of by the plaintiff all relate to the project land and Borneo Heights Resorts, which are in Sarawak.

[49] Ms. Yoong submits that instead of suing LCDA Holdings in the Kuching High Court in Sarawak, the plaintiff commenced its action in the Shah Alam High Court and relies on purported allegations made relating to the 18 December notice of meeting against the first and second defendants, who both reside in Kuching, Sarawak.

[50] She further submits that the plaintiff mounting these proceedings without naming LCDA and LCDA Holdings in is clearly an abuse of process and that its inclusion of the third defendant is meaningless as it is a nominal defendant.

The Plaintiff's Case

[51] Learned counsel for the plaintiff, Mr. Sanjay Kumar, submits that the plaintiff's claim relates to following issues:

(i) The refusal of the first and second defendants to recognise the appointment of the three new directors of the third defendant on 10 November 2020, who were nominated by the plaintiff and appointed pursuant to a Directors' Circular Resolution;

(ii) The alleged breach of directors' duties by the first and second defendants as directors of the third defendant; and

(iii) The alleged oppressive conducts of the first and second defendants towards the plaintiff in carrying out their duties as directors of the third defendant.

[52] Mr Sanjay Kumar submits that although the third defendant's place of business is in Sarawak, its registered place of business is in Selangor and that it is incorporated in West Malaysia. The plaintiff who is the majority shareholder of the third defendant, is also incorporated in West Malaysia. He submits that as the third defendant's registered address is in Selangor, the High Court in Malaya is conferred with the jurisdiction to hear the OS.

The Law

Legal Principles On Striking Out

[53] The legal principles governing striking out of pleadings under O. 18 r. 19 of the ROC is long settled. The Supreme Court in *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7; [1993] 3 MLJ 36 and in *Sim Kie Chon v. Superintendent Of Pudu Prison & Ors* [1985] 2 CLJ 449; [1985] CLJ (Rep) 293; [1985] 2 MLJ 385 adopted with approval the *dicta* in *Attorney-General of Duchy of Lancaster v. L & N.W. Railway Co* [1892] 3 Ch. 274 "that the summary procedure under this rule can only be adopted where it can clearly be seen that a claim or answer is on the face of it "obviously unsustainable".

[54] The issue in this instant case is a question of law, namely whether the High Court is vested with the jurisdiction to hear and try this case.

[55] The Court of Appeal in *Pengiran Othman Shah Pengiran Mohd Yussof & Anor v. Karambunai Resorts Sdn Bhd & Ors* [1996] 1 CLJ 257; [1996] 1 MLJ 309 at p. 266 (CLJ); p. 321 (MLJ) held that a question of law in itself does not prevent a court from granting an application for striking out under O. 18 r. 19. Siti Norma Yaacob JCA (as she then was) held:

When a question of law becomes an issue, this in itself will not prevent the court from granting the application, for as long as the court is satisfied that the issue of law is unarguable and unsustainable, it may proceed to determine that question. (See *Bank Negara Malaysia v. Mohd Ismail & Ors* [1992] 1 MLJ 400) …

Jurisdiction Of The High Court Of Malaya And The High Court Of Sabah And Sarawak

[56] The Federal Constitution created two separate High Courts in Malaysia: the High Court in Malaya and the High Court in Sabah and Sarawak – each exercising separate and distinct territorial jurisdictions.

[57] Article 121 of the Federal Constitution states:

(1) There shall be two High Courts of co-ordinate jurisdiction and status, namely:

(a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry at such place in the States of Malaya as the Yang di-Pertuan Agong may determine; and

(b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;

(c) (Repealed),

and such inferior courts as may be provided by federal law and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.

[58] The civil jurisdiction of the High Court in Malaya and the High Court in Sabah and Sarawak are laid down in the Courts of Judicature Act 1964 (Act 91) ("CJA 1964"). Section 23 of the CJA 1964 states:

(1) Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where:

(a) the cause of action arose;

(b) the defendant or one of several defendants resides or has his place of business;

(c) the facts on which the proceedings are based exist or are alleged to have occurred; or

(d) any land the ownership of which is disputed is situated,

within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

(2) Without prejudice to the generality of subsection (1), the High Court shall have such jurisdiction as was vested in it immediately prior to Malaysia Day and such other jurisdiction as may be vested in it by any written law in force within its local jurisdiction.

[59] The Federal Court in *Fung Beng Tiat v. Marid Construction Co* [1997] 2 CLJ 1; [1996] 2 MLJ 413 ("*Fung Beng Tiat*"), made it clear that there are two separate High Courts in Malaysia and that each High Court has jurisdiction over disputes that arise within its respective territory. Gopal Sri Ram JCA (as he then was) delivering the judgment of the Federal Court said:

> First, it is crystal clear from article 121 of the Federal Constitution that there are two separate High Courts in Malaysia exercising distinct territorial jurisdiction over different geographical areas of the country. There is the High Court in Malaya and there is the High Court in Sabah and Sarawak. Each has jurisdiction over disputes that arise within its territory. As presently advised, there is absent in any Federal Legislation that confers upon the one High Court to transfer proceedings to the other.
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> This bifurcation of territorial jurisdiction was dealt with by Hashim Yeop A Sani J (later Chief Justice, Malaya) in *Syarikat Nip Kui Cheong Timber Contractor v. Safety Life & General Insurance Co. Sdn. Bhd.* [1975] 2 MLJ 115. His Lordship observed that:
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> > [I]t is all too clear that both the High Court in Malaya and the High Court in Borneo have separate and distinctive territorial jurisdiction. Article 121(1) of the Constitution speaks of the two High Courts having 'co-ordinate jurisdiction' and the definition of 'local jurisdiction' in the Courts of Judicature Act, 1964 speaks of the territorial jurisdiction of each of the two High Courts.
> >
> > The enactment of s. 7(2) of the 1964 Act itself would strengthen the argument that the framers of the 1964 Act recognised the distinctive territorial jurisdiction of the two High Courts in Malaysia. …

[60] The Federal Court held that Abu Mansor J in *Dayasar Corp Sdn Bhd v. CP Ng & Co Sdn Bhd* [1990] 1 CLJ 262; [1990] 2 CLJ (Rep) 11; [1990] 1 MLJ 191 "adopted the correct approach to the question of jurisdiction" and cited the headnotes of the case as reported at [1990] 1 MLJ 191:

> (1) The issue of which High Court has jurisdiction over a matter is determined by s. 23 of the Courts of Judicature Act 1964. It is clear that the respondent, residing in Kuching, would come under s. 23(1)(b) of the Courts of Judicature Act 1964.
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> (2) While matters can be heard in any court of the courts of Malaya, it was not the intention of the legislature for any court in Malaya to assume jurisdiction of a matter arising in or which should be filed in a Borneo court. Since the respondent is residing in Kuching, the matter should really be filed in the Borneo High Court, in particular Kuching.

(3) From the point of view of convenience, Kuching would be more convenient, with the respondent residing there and the witnesses being there.

[61] Neither High Court has the jurisdiction to transfer proceedings from itself to the other High Court: the High Court of Malaya does not have the jurisdiction to transfer proceedings to the High Court of Sabah and Sarawak and *vice versa*. The Federal Court in *Hap Seng Plantations (River Estates) Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor* [2016] 4 CLJ 641; [2016] 3 MLJ 553 ("*Hap Seng Plantations*"), made it clear that the Federal Constitution allows the High Courts to have jurisdiction only as conferred by Federal law. It held that O. 57 r. 1 of the Rules of Court 2012, which is not a Federal law, cannot grant power to either High Courts to transfer proceedings between the High Courts in Malaya and in Sabah and Sarawak.

[62] *Choong Sheng Development Sdn Bhd v. Corak Nakhoda Sdn Bhd* [2011] 1 LNS 772; [2012] 2 MLJ 143 ("*Choong Sheng Development*"), concerned a writ action filed by the respondent in the High Court of Malaya at Shah Alam for alleged breaches of a plantation agreement located in Tawau, Sabah. The Court of Appeal in allowing the defendants' appeal and striking out the action, held that as the cause of action arose out of an alleged breach of the plantation agreement in Sabah and the defendants were residing in Sabah, "the High Court of Malaya the High Court in Malaya cannot confer territorial jurisdiction on itself over the case, filed by the plaintiff (respondent) in Shah Alam, as the Shah Alam writ cannot meet any of the criteria under s. 23(1)(a), (b) or (c) of the Courts of Judicature Act 1964."

[63] Learned counsel for the first and second defendants, Ms. Yoong Sin Min, submits that the factual matrix in this case is similar to that in *Choong Sheng Development*, as both the first and second defendants reside in Sarawak and business of the third defendant is in Sarawak, hence the High Court of Sabah and Sarawak would have the jurisdiction to hear the case.

[64] In *Bank Utama (Malaysia) Bhd v. Perkapalan Dai Zhun Sdn Bhd* [2003] 1 CLJ 450; [2003] 5 MLJ 40; [2003] 1 AMR 545 ("*Perkapalan Dai Zhun*"), the plaintiff company contended that Kuala Lumpur High Court is conferred with territorial jurisdiction to hear its writ action against the defendant company on the sole basis that the defendant's registered office was now in Kuala Lumpur. Vincent Ng J held that the factors determining the territorial jurisdiction of the High Court for civil matters were laid down in s. 23(1) of the CJA and that

> … it matters not a jot whether s. 23(1)(b) of the Act is read conjunctively or disjunctively **as the phrase 'resides or, has his place of business' should not be taken to mean or to connote 'having a registered office'.** If the latter position had been the intention of the legislature, it would have been so expressed. In my judgment, it is the place of business of a company which is of material consideration on the question of the locus of a cause of action. (emphasis added)

[65] In *Bank Industri & Teknologi Malaysia Bhd v. Alom Building Systems Sdn Bhd* [2006] 3 CLJ 506; [2006] 4 MLJ 405 ("*Alom Building Systems*"), the respondent's registered office was situated in Selangor and when it entered into a facility agreement with the appellant, it declared that it was "a company incorporated in Malaysia under the Companies Act 1965 and having its business address in Kuching, Sarawak". Clement Skinner J (as he then was) held since the respondent had a place of business within the local jurisdiction of the Kuching High Court, s. 23(1)(b) of the Courts of Judicature Act 1964 conferred jurisdiction on the High Court of Sabah and Sarawak at Kuching to hear the petition.

[66] In both *Perkapalan Dai Zhun* and *Alom Building Systems*, the High Court held that the notwithstanding that the defendants' registered office in both those cases were in Peninsular Malaysia, the fact that the defendants' place of business was in Sarawak conferred territorial jurisdiction on the High Court of Sabah and Sarawak under s. 23(1)(b) of the CJA.

[67] The plaintiff relies on *Siti Nur Aishah Ishak v. Golden Plus Holdings Bhd* [2017] 8 CLJ 272; [2017] 3 MLJ 701 ("*Siti Nur Aishah*"). In that case, the appellant was a shareholder of the respondent public listed company. She filed a petition at the Kuala Lumpur High Court to wind-up the respondent under the Companies Act 1965. The respondent applied to strike out the petition on the sole ground that since the respondent's registered office was in Kota Kinabalu, Sabah, only the High Court of Sabah and Sarawak has the jurisdiction to hear the petition. The respondent's application was allowed by the Kuala Lumpur High Court and the winding-up petition was struck out. On appeal by the petitioner, the Court of Appeal allowed the appeal and set-aside the High Court's decision to strike out the petition.

[68] Learned counsel for the plaintiff, Mr. Sanjay Kumar, submits that the third defendant's registered address in Selangor "provides the High Court of Malaya with the necessary jurisdiction to determine issues in relation to the composition of the third defendant and as such confers the necessary jurisdiction for the High Court of Malaya to determine the disputes in the originating summons".

[69] Mr Sanjay Kumar further submits that the first and second defendants' reliance on the High Court's decision in *Perkapalan Dai Zhun* (*supra*) is misplaced as it was made prior to the Court of Appeal's decision in *Siti Nur Aishah* and pursuant to the principle of *stare decisis* should be adopted instead. He also argues that the decision of the Federal Court in *Fung Beng Tiat* (*supra*) is specific to its own facts and have been distinguished by the High Court in *RHB Bank Bhd v. Kawood Sdn Bhd & Ors And Another Suit* [2002] 2 CLJ 387; [2001] 1 MLJU 690.

[70] With respect to learned counsel for the plaintiff, the fact that the decision of the Federal Court in *Fung Beng Tiat* has been distinguished on the facts by the High Court does not mean that the principle of law promulgated by the Federal Court in that case is no longer applicable.

[71] As regards the High Court's decision in *Perkapalan Dai Zhun* and *Alom Building Systems*, the Court of Appeal in *Siti Nur Aishah* said that both cases turned on its facts. Mary Lim JCA said:

> [49] In considering some of the earlier decisions, care must be taken as the underlying facts and circumstances in each of the cases cited are distinctly and materially different from our present facts. In *Bank Industri & Teknologi Malaysia Bhd v. Alom Building Systems Sdn Bhd* [2006] 4 MLJ 405, although the registered office was in Selangor, the business address of the company was in Kuching together with all its assets and machinery were in Kuching; while in *Bank Utama (M) Bhd v. Perkapalan Dai Zhun Sdn Bhd* [2003] 5 MLJ 40, the relevant transactions at the heart of the dispute were concluded in Kuching, and the respondent's business address was also in Kuching. In both instances, the High Court in Malaya concluded that it had no jurisdiction to try the civil proceedings in question.
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> [50] The same may also be said of the decision in *Bank Utama (M) Bhd v. Perkapalan Dai Zhun Sdn Bhd* at p 46. Aside from finding that a company's registered address in Kuala Lumpur did not fall within the meaning in s. 23(1)(b), Vincent Ng J also held that the High Court of Sabah and Sarawak at Kuching not only had jurisdiction but was the forum convenience and the most appropriate court to determine the dispute between the parties because the cause of action arose and the place of business of the defendant are all in Kuching. There being no factors within s. 23(1) to confer jurisdiction on the High Court in Malaya, the High Court dismissed the appeal, finding that the learned SAR was correct in striking out the claim.

[72] The Court of Appeal in *Siti Nur Aishah* made the following observations as regards the decisions of the Federal Court in *Fung Beng Tiat* (*supra*) and the Court of Appeal in *Malaysian Assurance Alliance Bhd v. Cosma Properties Sdn Bhd* [2013] 1 CLJ 69:

> [16] A careful reading of those decisions will readily show that the courts have consistently interpreted the meaning and operation of s. 23(1) of Act 91 in line with art. 121(1) of the Federal Constitution. When art. 121(1) established two High Courts of coordinate jurisdiction in the country, it also provided for federal law to be enacted to confer the necessary jurisdiction and power. …
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> …
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> ([17] Act 91 (CJA) is federal law enacted to confer the necessary civil and criminal jurisdiction and power on both High Courts. In respect of civil jurisdiction, s. 23(1) of Act 91 (CJA) confers on the two High Courts jurisdiction to try all civil proceedings within its respective local jurisdictions: …

[73] It went on to refer to the decision of the Federal Court in *Goodness For Import And Export v. Phillip Morris Brands SARL* [2016] 7 CLJ 303; [2016] 5 MLJ 171; [2016] 5 AMR 1 ("*Goodness for Import and Export*"), where the Federal Court confirmed that the jurisdiction on the High Court over a non-resident defendant is not only conferred by O. 11 of the ROC but also by s. 23 of the CJA. Mary Lim JCA said that the decision of the Federal Court's in *Goodness for Import and Export* and the Court of Appeal in *Matchplan (Malaysia) Sdn Bhd & Anor v. William D Sinrich & Anor* [2004] 1 CLJ 810, [2004] 2 MLJ 424; [2004] 2 AMR 118 supports the view that the four conditions in s. 23 of the CJA are to read disjunctively, which "means that so long as one of the four conditions is met then the High Court has jurisdiction or is competent to try the civil proceedings."

[74] Her Ladyship held that in the context of which of the two High Courts has jurisdiction, the conditions in s. 23(1) of the CJA must be examined from the perspective of the territorial jurisdiction of the High Court. She said:

> [32] Although this decision dealt with s. 23 in the context of O. 11 r. 1 of the RC 2012, the Federal Court's reasoning on the application of s. 23 is equally instructive in our present case. The four conditions in s. 23(1) are obviously disjunctive in intent and application. Once any of the conditions in s. 23(1)(a), (b), (c) or (d) are met, the High Court in Malaysia takes jurisdiction. In considering which of the two High Courts has jurisdiction, the same conditions in s. 23(1) have to be met but this time examined from the perspective of the 'local jurisdiction' or territorial jurisdiction of the High Court.

[75] Like the plaintiff in this instant case, the respondent in *Siti Nur Aishah* contended that the winding up petition fell outside the jurisdiction of the High Court of Malaya because the respondent's registered address was in Kota Kinabalu, Sabah. Mary Lim JCA held:

> [56] In that case, the only 'circumstance' relevant and under consideration under s. 23(1) of Act 91 was the residence of the debtor; no other circumstance being offered. That is to be contrasted with the present facts where the winding up presented against the respondent is premised on basis or facts which the court must examine to see if such basis or facts, assumed to be true (*Goodness For Import And Export v. Philip Morris Brands Sarl* at p 190), arise in the local or territorial jurisdiction of the High Court in Malaya. Where the answer to that issue is in the affirmative, which is the case here, the High Court in Malaya is seised with the necessary territorial jurisdiction conferred under s. 23(1)(a) and (c) of Act 91; even if one of the other circumstance, for example, the residence of the defendant is in the High Court in Sabah and Sarawak. …

[76] Applying these legal principles to the facts in *Siti Nur Aishah*, the Court of Appeal found that the winding up petition presented against the respondent company was premised on facts which arose in the local or

territorial jurisdiction of the High Court of Malaya, and that the High Court of Malaya had territorial jurisdiction under s. 23(1)(a) and (c) of the CJA even though the respondent's registered address was in Sabah.

[77] The Court of Appeal in *Siti Nur Aishah* held that where any one of the criteria in s. 23(1) of the CJA exists in the local jurisdiction of a High Court and any one or more of the criteria exits the local jurisdiction of the other High Court, the High Court in which the proceedings were filed had jurisdiction to hear the case. The High Court that was first seised with jurisdiction did not become incompetent just because another criterion in s. 23(1) of CJA conferring jurisdiction on the other High Court was met. What is necessary is that the High Court before which the civil action was filed had the requisite jurisdiction to try the proceedings. That High Court, once seized with jurisdiction, cannot strike out the plaintiff's claim on the basis that another criterion exists in the local jurisdiction of the other High Court.

Analysis And Findings Of This Court

[78] The primary issue for determination by this court in respect of the first and second defendants' application to strike-out the plaintiff's action is whether this High Court is properly vested with the jurisdiction to try and hear the plaintiff's OS in encl. 1 and its notice of application in encl. 2.

[79] The first and second defendants' case is that the plaintiff's alleged cause of action in respect of disputes relating to the JVA and its subsequent termination, and the special BOD meeting of the third defendant in Kuching, Sarawak called by the first defendant in the 18 December notice of meeting, does not arise within the jurisdiction of the High Court of Malaya. Additionally, the project land for which the plaintiff is claiming interest is located in Sarawak; the first and second defendants are residents of Sarawak; and the third defendant, which is a nominal defendant, has its place of business in Sarawak – all of which are within the local jurisdiction of the High Court of Sabah and Sarawak.

[80] Conversely, the plaintiff's position is that there are no merits in the first and second defendant's application to strike out the OS as it is not a plain and obvious case for the summary procedure of striking out to be adopted. Learned counsel for the plaintiff submits that the High Court in Malaya has the necessary jurisdiction to determine the dispute between the parties as the third defendant is incorporated in West Malaysia and its registered office is in Selangor.

[81] It is evident from the facts that the reliefs and remedies sought in the OS are against the first and second defendants only, and not the third defendant. In para. 16 of the plaintiff's affidavit in reply (encl. 17), Tan Sri Lee averred:

> In reply to paragraphs 9, 10, 11, 12 and 13 of the 1st Defendant's Affidavit in Support, I state that the Originating Summons and the Plaintiff's Application for Interim Injunction is file against the 1st and 2nd Defendant as they have acted in breach of their duties as a director of BHSB. … The remedy and relief sought are against the 1st and 2nd Defendants. I state that the relief that are being sought is necessary to prevent the 1st and 2nd Defendant from taking steps to prejudice and impact the Plaintiff's rights under the JVA.

[82] The third defendant is, therefore, a nominal defendant. From the plaintiff's assertion that this court has jurisdiction to hear their applications in the OS and encl. 2 because the third defendant's registered address is in Selangor, I agree with the first and second defendants that it appears the reason why the third defendant was made a defendant in this OS and LCDA and LCDA Holdings were not, was to bring the proceedings within the jurisdiction of the High Court of Malaya.

[83] It is settled law that the High Court of Malaya and the High Court of Sabah and Sarawak are conferred jurisdiction under s. 23(1) of the CJA to try all civil proceedings where (a) the cause of action arose; (b) the defendant or one of several defendants resides or has his place of business; (c) the facts on which the proceedings are based exist or are alleged to have occurred; or (d) any land the ownership of which is disputed is situated, with the local jurisdiction of the said High Court; or where the all the parties consent in writing within the local jurisdiction of the other High Court.

[84] It is trite that items a, b, c and d of s. 23(1) are to be read disjunctively: see *Fung Beng Tiat* (*supra*) and *Siti Nur Aishah* (*supra*). Thus, the High Court where any one of the four criteria in s. 23(1) of the CJA is located within its local jurisdiction would have the jurisdiction to hear and try the proceedings.

Where Did The Cause Of Action Arise?

[85] Under s. 23(1)(a) of the CJA, the High Court in whose local jurisdiction "the cause of action" arose shall have local jurisdiction to the civil proceedings related to that cause of action.

[86] The alleged cause for the plaintiff's application in the OS and its application for an interim injunction in encl. 2, arose from the first defendant's action in requisitioning for the special BOD meeting to be held on 28 December 2020 through the 18 December notice of meeting. The said 18 December notice of meeting was issued in Kuching, Sarawak. And the special BOD meeting which the plaintiff is seeking to restrain through the interim and permanent injunctions was to be held in Kuching, Sarawak.

[87] The alleged actions of the first and second defendant in having conducted the affairs of the third defendant, which the plaintiff claims are oppressive, discriminatory and/or prejudicial of the plaintiff, took place in Sarawak.

[88] The first and second defendants' alleged actions in seeking to take control of the third defendant by, among others, wrongfully seeking to forfeit the plaintiff's shares in the third defendant and for causing the project lands to be forfeited by the Sarawak Government, all arose in Kuching, Sarawak.

[89] It is evident from the facts that the plaintiff's alleged cause of action and grounds of complaint against the first and second defendants are essentially for actions and decisions taken in Sarawak in respect of the plaintiff's and LCDA's joint venture as regards the development, management and operation of the Borneo Highlands Resort; the plaintiff's and LCDA Holding's shareholding in the third defendant; and the third defendant's ownership, development, management and operation of the project land and Borneo Highlands Resort, which are both located on Gunong Penrissen, Kuching, Sarawak.

[90] All these causes of action arose in Sarawak. Accordingly, pursuant to s. 23(1)(a) of the CJA, it is the High Court of Sabah and Sarawak that has the jurisdiction to try these proceedings and not the High Court of Malaya.

Where Do The Defendants Reside?

[91] Section 23(1)(b) of the CJA stipulates that the High Court "where the defendant or one of several defendants resides or has his place of business" shall have jurisdiction to try the proceedings.

[92] The third defendant's place of business is in Sarawak and the business it is operating and managing ie, the Borneo Highlands Resort, is also situated in Sarawak. Per the terms of the JVA, the *raison d'etre* of the third defendant is to be the vehicle by which the parties to the JVA ie, plaintiff and LCDA are to own the project land, and to develop, operate and manage the Borneo Highlands Resort on the said project land, all of which are located in Sarawak.

[93] I find that the common thread in the courts' decisions in *Perkapalan Dai Zun, Alom Building Systems* and *Siti Nur Aishah*, is that for defendants who are corporate entities, the courts will look at the facts of the case to see where the cause of action arose and where the defendant's place of business is, in order to determine which High Court has territorial jurisdiction under s. 23(1) of the CJA.

[94] The fact that the defendant's registered address is in the territory of a High Court does not automatically confer that High Court jurisdiction under s. 23(1)(c) of the CJA if the defendant's place of business is located in the jurisdiction of the other High Court.

[95] Additionally, the place where a defendant company is incorporated does not confer jurisdiction on either High Courts under s. 23(1) of the CJA. I have to respectfully disagree with plaintiff's counsel – the third defendant was incorporated under the Companies Act 1965 in Malaysia and not in

West Malaysia, as submitted by plaintiff's counsel. The Companies Act 1965 (and similarly the Companies Act 2016) does not provide for incorporation of companies in West Malaysia or in East Malaysia – they are all incorporated in Malaysia. And they are all registered under the Companies Act, no matter where in Malaysia their registered office is.

[96] Section 23(1)(b) of the CJA states that the High Court shall have jurisdiction to try all civil proceedings where "the defendant or one of several defendants resides or has his place of business." It does not state the High Court where the defendant was incorporated or where the defendant has its registered office shall have jurisdiction to try the civil proceedings. I agree with the view expressed by Vincent Ng J in *Perkapalan Dai Zhun* that if Parliament had intended the location of the defendant's registered office to confer jurisdiction on the High Court where the registered office in located, it would have been so expressed in s. 23(1) of the CJA.

[97] The first and second defendants are natural persons; they are not corporate entities. Therefore, the point relating to the "registered address" of the defendant does not arise on the question of where they reside. It is undisputed that the first and second defendants reside in Sarawak, which is within the local jurisdiction of the High Court of Sabah and Sarawak at Kuching and not within the local jurisdiction of the High Court of Malaya at Shah Alam.

Where Do The Facts On Which The Proceedings Are Based Exists Or Alleged To Have Occurred?

[98] Section 23(1)(c) of the CJA states that the High Court where "the facts on which the proceedings are based exist or are alleged to have occurred" shall have jurisdiction to try the proceedings.

[99] The injunctions, declarations, and order that the plaintiff is seeking in these proceedings stem from 18 December notice of meeting issued by the first defendant for a special BOD meeting of the third defendant scheduled on 28 December 2020 to be held Kuching, Sarawak. The 18 December notice of meeting was also issued by the first defendant in Kuching, Sarawak.

[100] Therefore, pursuant to s. 23(1)(c) of the CJA, the High Court of Sabah and Sarawak at Kuching has jurisdiction to hear and try these proceedings.

Where Is The Location Of The Land Of Which Ownership Is Disputed?

[101] Section 23(1)(d) of the CJA states that the High Court where "any land the ownership of which is disputed is situated" shall have jurisdiction to try the proceedings.

[102] The Borneo Highlands Resort and the project land which is the subject matter of the JVA between the plaintiff and LCDA Holdings, and in which the plaintiff is claiming an interest in by virtue of its shareholding in the third defendant, is situated in Kuching, Sarawak.

[103] The plaintiff in its letter dated 30 November 2020 to LCDA accused it of having used a Sarawak State apparatus as "a tool to oppress" the plaintiff by virtue of the show cause letter dated 4 August 2020 from the Land and Survey Department to the plaintiff as regards the project land. In para. 26(b) of the plaintiff's affidavit in support of the OS (encl. 3), Tan Sri Lee said:

> Given that LCDA was part of the state apparatus and was perfectly content with pace of development and the manner in which the project has been managed over the last 26 years I do not see the basis for this complaint or the threat from the Land Office to invoke section 33 of the Sarawak Land Code which is essentially a right to forfeit the Project Lands.

[104] Thus, it is clear that pursuant to s. 23(1)(d) of the CJA, the High Court of Sabah and Sarawak at Kuching has the jurisdiction to hear and try these proceedings.

Conclusion

[105] For the reasons discussed above, I am satisfied that none of the criteria in s. 23(1) of the CJA exists in the local jurisdiction of the High Court of Malaya at Shah Alam. This High Court cannot confer territorial jurisdiction on itself over the plaintiff's OS in encl. 1 and notice of application in encl. 2 filed in this court when none of the criteria under s. 23(1) of the CJA are within the local jurisdiction of this court.

[106] Accordingly, I find that the High Court of Malaya is not vested with the local jurisdiction to hear and try the plaintiff's application.

[107] As this court does not have the jurisdiction to hear the applications in encl. 1 and encl. 2 and to grant the reliefs sought therein, it is plain and obvious that both applications are unsustainable.

[108] The High Court of Malaya's want of jurisdiction renders the plaintiff's OS and the application for interim injunction in encl. 2 filed in this court scandalous, frivolous, and/or vexatious. It was also an abuse of process of court for the plaintiff to have filed the action in this court instead of the High Court of Sabah and Sarawak at Kuching, in whose local jurisdiction more than one of the criteria in s. 23(1) of the CJA exists.

[109] Accordingly, the first and second defendants' application to strike out the plaintiff's OS and notice of application is allowed. The OS in encl. 1 and the notice of application in encl. 2 is hereby struck out pursuant to O. 18 r. 19(1)(b) and (d) of the Rules of Court, with costs.